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EXTRAORDINARY

PART II—Section 2

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## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 24th September, 1958:—

BILL No. VI OF 1958

*A bill further to amend the Workmen's Compensation Act, 1923.*

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Workmen's Compensation (Amendment) Act, 1958.

Short title  
and com-  
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

8 of 1923.

2. In section 2 of the Workmen's Compensation Act, 1923 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment  
of section 2.

(i) clause (a) shall be omitted;

(ii) after clause (f), the following clause shall be inserted, namely:—

‘(ff) “minor” means a person who has not attained the age of 18 years;’;

21 & 22  
Vict. c. 90.

(iii) in clause (i), the words and figures “under the Medical Act, 1858, or any Act amending the same, or” shall be omitted.

3. In section 3 of the principal Act,—

Amendment  
of section 3.

(i) in clause (a) of the proviso to sub-section (1), for the word “seven”, the word “five” shall be substituted;

( 1009 )

(ii) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

“(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment.

(2A) If any disease specified in Part C of Schedule III as an occupational disease peculiar to that employment has been contracted by any workman during the continuous period specified under sub-section (2) in respect of that employment and the workman has during such period been employed in such employment under more than one employer, all such employers shall be liable for the payment of compensation under this Act in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The State Government in the case of employments specified in Part A and Part B of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-sec-

tion (2) shall apply within the State or the territories to which this Act extends, as the case may be, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.”;

(iii) in sub-section (4), for the word, brackets and figure “sub-sections (2)”, the word, brackets, figures and letter “sub-sections (2), (2A)” shall be substituted.

4. In section 4 of the principal Act, in sub-section (1),—

Amendment  
of section 4.

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) Where death results from the injury and the deceased workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof;

(b) Where permanent total disablement results from the injury and the injured workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof;”;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) Where temporary disablement, whether total or partial, results from the injury and the injured workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV—a half-monthly payment of the sum shown against such limits in the fourth column thereof, payable on the sixteenth day—

(i) from the date of the disablement, where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of five days from the date of the disablement, where such disablement lasts for a period of less than twenty-eight days,

and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter.”;

(iii) after the proviso, the following *Explanation* shall be inserted, namely:—

“*Explanation.*—Any payment or allowance which the workman has received from the employer towards his

medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso."

Insertion of  
new section  
4A.

5. After section 4 of the principal Act, the following section shall be inserted, namely:—

Compensa-  
tion to be  
paid when  
due and  
penalty for  
default.

"4A. (1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six per cent. per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty per cent. of such amount, shall be recovered from the employer by way of penalty."

Amendment  
of section 5.

6. In section 5 of the principal Act, in clause (c), for the words "in other cases" the words, brackets and letter "in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)]" shall be substituted.

Amendment  
of section 8.

7. In section 8 of the principal Act, in sub-section (4), for the words "twenty-five rupees", the words "fifty rupees" shall be substituted.

Amendment  
of section 10.

8. In section 10 of the principal Act, in sub-section (1), for the words "one year" wherever they occur, the words "two years" shall be substituted.

9. In section 10B of the principal Act,—

Amendment  
of section  
10B.

(i) in sub-section (1), after the word “death” wherever it occurs, the words “or serious bodily injury” shall be inserted; and the following *Explanation* shall be added at the end, namely:—

*‘Explanation.—“Serious bodily injury” means an injury which involves, or in all probability will involve, the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days’;*

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

34 of 1948.

“(3) Nothing in this section shall apply to factories to which the Employees’ State Insurance Act, 1948, applies.”.

10. After section 14 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
14A.

“14A. Where an employer transfers his assets before any amount due in respect of any compensation, the liability wherefor accrued before the date of the transfer, has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property.”.

Compensation to be first charge on assets transferred by employer.

11. In section 15 of the principal Act, in sub-section (2),—

Amendment  
of section 15.

(a) for the words “six months”, the words “one year” shall be substituted; and

(b) the following proviso shall be added at the end, namely:—

“Provided that the Commissioner may entertain any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided

in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.”.

Omission  
of section 18.

12. Section 18 of the principal Act shall be omitted.

Amendment  
of section  
18A.

13. In section 18A of the principal Act, in sub-section (1), for the words “one hundred”, the words “five hundred” shall be substituted.

Substitution  
of section 24.

14. For section 24 of the principal Act, the following section shall be substituted, namely:—

Appearance  
of parties.

“24. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or by an official of an Insurance Company or a registered Trade Union or by an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948, or under sub-section (1) of section 5 of the Mines Act, 1952, or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner, by any other person so authorised.”.

63 of 1948.  
35 of 1952.

Amendment  
of section 30.

15. In section 30 of the principal Act, after clause (a), the following clause shall be inserted, namely:—

“(aa) an order awarding interest or penalty under section 4A;”.

Amendment  
of section  
32.

16. In section 32 of the principal Act, in sub-section (2), after clause (n), the following clauses shall be inserted, namely:—

“(o) for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts;

(p) for prescribing the manner in which diseases specified as occupational diseases may be diagnosed;

(q) for prescribing the manner in which diseases may be certified for any of the purposes of this Act;

(r) for prescribing the manner in which, and the standards by which, incapacity may be assessed.”.

17. For Schedule I to the principal Act, the following Schedule shall be substituted, namely:—

Substitution  
of new Sched-  
ule for  
Schedule I.

### SCHEDULE I

[See sections 2(1) and (4).]

#### LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

Serial No.	Description of injury	Percentage of loss of earning capacity
1	Loss of both hands or amputation at higher sites . . . . .	100
2	Loss of a hand and a foot . . . . .	100
3	Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot. . . . .	100
4	Loss of sight to such an extent as to render the claimant unable to perform any work for which eye sight is essential . . . . .	100
5	Very severe facial disfigurement . . . . .	100
6	Absolute deafness . . . . .	100
<i>Amputation cases—upper limbs (either arm)</i>		
7	Amputation through shoulder joint . . . . .	90
8	Amputation below shoulder with stump less than 8" from tip of acromion . . . . .	80
9	Amputation from 8" from tip of acromion to less than 4 1/2" below tip of olecranon . . . . .	70
10	Loss of a hand or of the thumb and four fingers of one hand or amputation from 4 1/2" below tip of olecranon . . . . .	60
11	Loss of thumb . . . . .	30
12	Loss of thumb and its metacarpal bone . . . . .	40
13	Loss of four fingers of one hand . . . . .	50
14	Loss of three fingers of one hand . . . . .	30
15	Loss of two fingers of one hand . . . . .	20
16	Loss of terminal phalanx of thumb . . . . .	20
<i>Amputation cases—lower limbs</i>		
17	Amputation of both feet resulting in end-bearing stumps. . . . .	90
18	Amputation through both feet proximal to the metatarso-phalangeal joint. . . . .	80
19	Loss of all toes of both feet through the metatarso-phalangeal joint . . . . .	40
20	Loss of all toes of both feet proximal to the proximal inter-phalangeal joint . . . . .	30
21	Loss of all toes of both feet distal to the proximal inter-phalangeal joint . . . . .	20
22	Amputation at hip . . . . .	90

Serial No.	Description of injury	Percentage of loss of earning capacity
23	Amputation below hip with stump not exceeding 5" in length measured from tip of great trochanter . . . . .	80
24	Amputation below hip with stump exceeding 5" in length measured from tip of great trochanter but not beyond middle thigh. . . . .	70
25	Amputation below middle thigh to 3 1/2" below knee . . . . .	60
26	Amputation below knee with stump exceeding 3 1/2" but not exceeding 5". . . . .	50
27	Amputation below knee with stump exceeding 5". . . . .	40
28	Amputation of one foot resulting in end-bearing . . . . .	30
29	Amputation through one foot proximal to the metatarso-phalangeal joint . . . . .	30
30	Loss of all toes of one foot through the metatarso-phalangeal joint . . . . .	20
<i>Other injuries</i>		
31	Loss of one eye, without complications, the other being normal . . . . .	40
32	Loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal . . . . .	30
<i>Loss of—</i>		
<i>A.—Fingers of right or left hand</i>		
<i>Index finger</i>		
33	Whole . . . . .	14
34	Two phalanges . . . . .	11
35	One phalanx . . . . .	9
36	Guillotine amputation of tip without loss of bone . . . . .	5
<i>Middle finger</i>		
37	Whole . . . . .	12
38	Two phalanges . . . . .	9
39	One phalanx . . . . .	7
40	Guillotine amputation of tip without loss of bone . . . . .	4
<i>Ring or little finger</i>		
41	Whole . . . . .	7
42	Two phalanges . . . . .	6
43	One phalanx . . . . .	5
44	Guillotine amputation of tip without loss of bone . . . . .	2
<i>B.—Toes of right or left foot</i>		
<i>Great toe</i>		
45	Through metatarso-phalangeal joint . . . . .	14
46	Part, with some loss of bone . . . . .	3



Serial No.	Description of injury	Percentage of loss of earning capacity
<i>Any other toe</i>		
47	Through metatarso-phalangeal joint . . . . .	3
48	Part, with some loss of bone . . . . .	1
<i>Two toes of one foot, excluding great toe</i>		
49	Through metatarso-phalangeal joint . . . . .	5
50	Part, with some loss of bone . . . . .	2
<i>Three toes of one foot, excluding great toe</i>		
51	Through metatarso-phalangeal joint . . . . .	6
52	Part, with some loss of bone . . . . .	3
<i>Four toes of one foot, excluding great toe</i>		
53	Through metatarso-phalangeal joint . . . . .	9
54	Part, with some loss of bone . . . . .	3

## 18. In Schedule II to the principal Act,—

Amendment  
of Schedule  
II.

(i) for clauses (i) to (ix), the following clauses shall be substituted, namely:—

“(i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof twenty or more persons are so employed; or

(iv) employed in the manufacture or handling of explosives in connection with the employer's trade or business; or

(v) employed, in any mine as defined in clause (j) of section 2 of the Mines Act, 1952, in any mining operation

63 of 1948.

35 of 1952.

or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground; or

(vi) employed as the master or as a seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) any ship not included in sub-clause (a), of twenty-five tons net tonnage or over, or

(c) any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sails alone; or

(vii) employed for the purpose of—

(a) loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to the Indian Ports Act, 1908, of goods which <sup>15 of 1908.</sup> have been discharged from or are to be loaded into any vessel; or

(b) warping a ship through the lock; or

(c) mooring and unmooring ships at harbour wall berths or in pier; or

(d) removing or replacing dry dock caissons when vessels are entering or leaving dry docks; or

(e) the docking or undocking of any vessel during an emergency; or

(f) preparing splicing coir springs and check wires, painting depth marks on lock-sides, removing or replacing fenders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or

(g) any work on jolly-boats for bringing a ship's line to the wharf; or

(viii) employed in the construction, maintenance, repair or demolition of—

(a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(c) any road, bridge, tunnel or canal; or

(d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or

(ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same; or";

(ii) in clause (xiii), after the words "Railway Mail Service", the words "or as a telegraphist or as a postal or railway signal-ler" shall be inserted;

(iii) in clause (xvi), for the words "fifty" and "twenty", the words "twenty-five" and "twelve" shall respectively be substituted;

(iv) in clause (xxvi), for the word "one hundred", the word "fifty" shall be substituted;

(v) in clause (xxvii), the word "or" shall be inserted at the end, and after that clause, the following clauses shall be inserted, namely:—

"(xxviii) employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian <sup>22</sup> of 1934. Aircraft Act, 1934; or

(xxix) employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity; or

(xxx) employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; or

(xxxi) employed in the maintenance, repair or renewal of electric fittings in any building; or

(xxxii) employed in a circus."

Amendment  
of Schedule  
III.

19. In Schedule III to the principal Act,—

(i) for Part B, the following Part shall be substituted, namely:—

**"PART B**

Poisoning by lead, its alloys or compounds or its sequelae excluding poisoning by lead tetra-ethyl.	Any process involving the handling or use of lead or any of its preparations or compounds except lead tetra-ethyl.
Poisoning by phosphorus or its compounds, or its sequelae.	Any process involving the use of phosphorus or its preparations or compounds.
Poisoning by mercury, its amalgams and compounds, or its sequelae.	Any process involving the use of mercury or its preparations or compounds.
Poisoning by benzene, or its homologues, their amido and nitro derivatives or its sequelae.	Any process involving the manufacture, distillation, or use of benzene, benzo, benzene homologues and amido and nitro-derivatives.
Chrome ulceration or its sequelae.	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations.
Poisoning by arsenic or its compounds, or its sequelae.	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to—	
(a) radium and other radio-active substances;	Any process involving exposure to the action of radium, radio-active substances, or X-rays.
(b) X-rays.	
Primary epitheliomatous cancer of the skin.	Any process involving the handling or use of tar, pitch, bitumen, mineral oil, paraffin, or the compounds, products or residues of these substances.
Poisoning by halogenated hydrocarbons of the aliphatic series and their halogen derivatives.	Any process involving the manufacture, distillation and use of hydrocarbons of the aliphatic series and their halogen derivatives.
Poisoning by carbon disulphide or its sequelae.	Any employment in— (a) the manufacture of carbon disulphide; or (b) the manufacture of artificial silk by viscose process; or (c) rubber industry; or (d) any other industry involving the production or use of products containing carbon disulphide or exposure to emanations from carbon disulphide.
Occupational cataract due to infra-red radiations.	Any manufacturing process involving exposure to glare from molten material or to any other sources of infra-red radiations.
Telegraphist's Cramp	Any employment involving the use of telegraphic instruments."

(ii) after Part B, the following Part shall be inserted, namely:—

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"Part C	
Silicosis . . . . .	Any employment involving exposure to the inhalation of dust containing silica.
Coal Miners' Pneumoconiosis . . . . .	Any employment in coal mining.
Asbestosis . . . . .	Any employment in— (1) the production of— (i) fibro cement materials; or (ii) asbestos mill board; or (2) the processing of ores containing asbestos.
Bagassosis . . . . .	Any employment in the production of bagasse mill board or other articles from bagasse."

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20. In Schedule IV to the principal Act, the words "of Adult" Amendment  
wherever they occur, shall be omitted. of Schedule  
IV.

### STATEMENT OF OBJECTS AND REASONS

The Workmen's Compensation Act, 1923, which came into force on the 1st July, 1924, has been amended several times, the major amendments being as follows:—

Act V of 1929 *inter alia* enlarged the categories of workmen, removed the restrictions on compensation in the building trades and altered the provisions relating to the distribution of compensation. In 1933, the Act was revised extensively on the lines recommended by the Royal Commission on Labour in India in 1931; the main amendments carried out were, a considerable enlargement in the number of workmen covered by the Act, increase in the scales of compensation and reduction of the "waiting period". By the amending Act I of 1946, the wage limit of workers covered by the Act was increased from Rs. 300 to Rs. 400.

2. The working of the Act has shown that it requires to be further amended in certain respects. Some of the important amendments the Bill seeks to make relate to:—

(a) removing the distinction between an adult and a minor for the purposes of workmen's compensation;

(b) reducing the waiting period of seven days to five days for being entitled to compensation and, in cases where the period of disablement is twenty-eight days or more, providing for payment of compensation from the date of disablement;

(c) providing for penalty for failure to pay compensation, when due;

(d) enlarging the scope of Schedules I, II and III.

3. The reasons for the amendments are, wherever necessary, given in the notes on clauses attached to this Bill.

NEW DELHI;  
The 16th September, 1958.

G. L. NANDA.

*Notes on clauses*

*Clause 2.*—This clause removes the distinction between an adult and a minor for the purpose of workmen's compensation. At present the Act prescribes different rates of compensation for adults and minors for death and permanent disablement on the ground that a minor will have, as a general rule, no dependants. There is not much justification for this distinction and it is reasonable that there should be uniform rates of compensation for workmen in similar wage-groups.

Though for purposes of payment of compensation the distinction between an adult and a minor is being removed, for other purposes a 'minor' will have the normal meaning, namely, a person who has not attained the age of 18 years.

Reference to a foreign Act in clause (i) has been omitted, being unnecessary.

*Clause 3.*—This clause reduces the waiting period of 7 days to 5 days as prescribed in the I.L.O. Convention on Workmen's Compensation (Accidents), 1925. It also empowers the Commissioner to apportion the liability for compensation between different employers in certain cases where the workman has been employed in the same employment for a specified continuous period under more than one employer.

*Clause 4.*—The amendments are mostly consequential. In clause 3(1) it has been proposed to reduce the waiting period to 5 days. No compensation will therefore be payable in respect of this period. In order, however, to reduce the hardship of a workman in case he suffers an injury which incapacitates him for four weeks or more, a provision is being made for payment of compensation for the waiting period also.

A provision is also being made that where an employer spends any sum of money on the medical treatment of an injured workman, he should not be permitted to deduct the amount from the compensation payable. The compensation is for loss of future earnings and not for getting medical treatment.

*Clause 5.*—This provision is being made in order to ensure that the workman is able to get whatever amount the employer is prepared to pay immediately pending a decision on the amount of compensation actually due.

This clause also provides for payment of interest if the compensation is not paid within one month from the due date and for a penalty if the Commissioner does not consider the delay to be justified.

*Clause 6.*—This amendment is intended to facilitate calculation of monthly wages where there are difficulties in calculating it under clause (b) of section 5.

*Clause 7.*—At the existing level of prices, the limit of Rs. 25 for grant of advances for funeral expenses is very low and it is accordingly being increased to Rs. 50.

*Clause 8.*—The limitation period of one year for preferring a claim before the Commissioner is not sufficient as the worker often fails to file a claim in time due to his remaining in hospital for treatment and then petitioning the employer for settlement of his dues with the result that by the time he thinks of legal remedies the time-limit of one year is over. It is proposed accordingly to increase the period of limitation to two years.

*Clause 9.*—It is proposed that accidents resulting in serious bodily injury should also be reported to the authority concerned. At present only fatal accidents are being reported under section 10B.

*Clause 10.*—This clause seeks to protect the interests of a workman who is entitled to compensation in the event of the employer transferring his assets before discharging his liability under the Act.

*Clause 11.*—This clause, like clause 8, increases the limitation period and empowers the Commissioner to extend the period of limitation in suitable cases if he is satisfied that the failure to prefer the claim was due to sufficient cause.

*Clause 12.*—This is consequential to the amendment proposed to section 2(1) (a).

*Clause 13.*—The amount of fine is too low and it is proposed to increase it to Rs. 500. This is also the limit of fine under the Employees' State Insurance Act, 1948.



*Clause 14* -It is intended that an Inspector appointed under the Factories Act, 1948, or Mines Act, 1952 or any other officer specified by the State Government should be enabled to prefer claims on behalf of the workmen or the dependants concerned if authorised in writing. This will be of help to the workmen or the dependants who are ignorant of the protection afforded under the Act or are otherwise unable to set the law in motion.

*Clause 15.*—As a provision has been made in clause 5(3) for payment of interest or penalty for failure to pay the compensation when due, it is proposed to provide for an appeal under section 30 against such order.

*Clause 16.*—Display of abstracts from the Act will be of help to the workers in informing them of the protection afforded to them under the Act. This clause also enables the State Government to make rules for prescribing the manner in which diseases may be diagnosed and certified and incapacity assessed.

*Clause 17.*—Schedule I as a whole is outmoded and not in conformity with present day standards of assessing disabilities. The Schedule in the National Insurance (Industrial Injuries) Benefit Regulations, 1948, of the U.K. is more modern and it is proposed to adopt it.

*Clause 18.*—(i) *Clause (i).*—A person employed on loading or unloading a vehicle may be said to be employed in connection with its operation. This is, however, proposed to be made clear beyond doubt.

*Clause (ii).*—It is proposed to cover all workmen working in power using factories irrespective of the number of workmen employed.

*Clause (iii).*—This clause relates to factories not using power. Under the Factories Act, 1948, factories employing 20 or more persons are covered. Workmen in all such factories are proposed to be covered.

*Clause (iv).*—As there is a considerable risk in the manufacturing or handling of explosives, all workmen engaged in any such work are proposed to be covered irrespective of the number of persons employed.

*Clause (v).*—Amendments consequential to the Mines Act, 1952, having replaced the Indian Mines Act, 1923, are being made. It is also intended that all workers in mines should be entitled to the benefits of the Workmen's Compensation Act, 1923.

*Clause (vi).*—At present the master and seamen of ships of less than 50 tons are excluded unless power is used. The I.L.O. Convention on "shipowners' liability in respect of Sickness Injury or Death of Seamen" permits exclusion of boats of less than 25 gross tonnage. The tonnage limit in sub-clause (b) is accordingly proposed to be reduced to 25 tons.

In accordance with the recommendation made by the Estimates Committee in its 62nd Report on "Shipping", the Act is being made applicable to all sea-going sailing vessels.

*Clause (vii).*—Certain classes of workers in Ports engaged in hazardous occupations are not covered by the Act. It is proposed to bring such classes of workers also within the purview of the Act.

*Clause (viii).*—Workers employed in maintenance of buildings also run a risk like workers engaged in repairing and it is accordingly proposed to cover them.

The present height limit of twenty feet is high, and a demand for the removal of height limits has been made. But since the hazard is in the height at which a worker is required to work, some height limit is necessary. It is accordingly proposed to reduce the height limit to twelve feet.

Work in a canal is also hazardous and it is proposed to make it clear that workers engaged in the construction, etc., of a canal are also covered.

*Clause (ix).*—The clause as revised is intended to cover persons employed in the routine work of repairing and replacing electric cables and other fittings.

(ii) Telegraphists and postal and railway signallers are proposed to be included as their work is also hazardous.

(iii) The limit of 50 persons is too high and it is proposed to reduce it to 25. Further in accordance with the reduction in the height limit in clause (viii) from twenty feet to twelve feet, the depth limit in this clause is proposed to be similarly reduced.

(iv) The limit of one hundred persons with respect to employment in a market is too high and it is proposed to reduce it to fifty persons.

(v) In all the employments mentioned in this sub-clause there is considerable employment risk and it is accordingly proposed to cover workmen working in such employments.

*Clause 19.*—The Schedule requires a few modifications to bring it in line with the provisions of Convention (42) concerning Workmen's Compensation (Occupational Diseases). It also does not include some of the prevailing occupational diseases. It is proposed to remove these deficiencies.

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## FINANCIAL MEMORANDUM

The Workmen's Compensation Act, 1923, covers a large number of persons in Central Government undertakings such as the railways, posts and telegraphs, construction works, etc. Some of the amendments proposed in the Bill will have the effect of increasing the liability of the employers (including the Central Government) for payment of compensation. Clause 5 of the Bill seeks to provide a penalty for failure to pay compensation when due with the result that the employer will have to pay increased amounts in cases where payment of compensation has been delayed for more than a month. Clause 17 contemplates replacement of Schedule I by a more comprehensive Schedule which will increase the percentage of disablement and will correspondingly increase the rates of compensation for the various types of injuries. The amendments proposed to Schedule II to the Act will make the Act applicable to an increased number of persons in factories, mines, ports, construction works and also to persons employed in manufacture, etc., of aircraft, in farming by tractors, in construction, working, repair or maintenance of tube-wells, etc. Schedule III to the Act, which contains a list of occupational diseases, is proposed to be amended and enlarged with the result that compensation will be payable in respect of the new diseases being included in that Schedule. The above proposals will thus involve increased expenditure from the Consolidated Fund of India in so far as they concern the Central Government undertakings. As compensation becomes payable only in the event of an employment injury resulting in disablement or death, it is not possible to estimate the amount of increased expenditure.

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## MEMORANDUM REGARDING DELEGATED LEGISLATION

The Workmen's Compensation Act is administered by the State Governments. Clause 16 of the Bill amplifies the rule-making power conferred on the State Governments by section 32 of the principal Act. The matters specified in clause 16 are of a routine and general character; they provide for requiring the employers to display notices containing abstracts from the Act and for the diagnosis and certification of diseases and for the method by which incapacity for the purposes of this Act may be assessed.

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## BILL No. VII OF 1958.

*A Bill to make provision for the regulation of the profession of cost and works accountants.*

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Cost and Works Accountants Act, 1958. Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires,—

(a) “associate” means an associate member of the Institute; Definitions  
and Inter-  
pretation.

(b) “cost accountant” means a person who is a member of the Institute and who is in practice as a cost and works accountant;

(c) “Council” means the Council of the Institute;

(d) “dissolved company” means the Institute of Cost and Works Accountants registered under the Companies Act, 1956;

(e) “fellow” means a fellow of the Institute;

(f) “Institute” means the Institute of Cost and Works Accountants of India constituted under this Act;

(g) "prescribed" means prescribed by regulations made under this Act;

(h) "President" means the President of the Council;

(i) "Register" means the Register of members maintained under this Act;

(j) "Vice-President" means the Vice-President of the Council;

(k) "year" means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year.

(2) A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice, he, in consideration of remuneration received or to be received,—

(i) engages himself in the practice of cost and works accountancy; or

(ii) offers to perform or performs services involving the costing or pricing of goods or the preparation, verification or certification of cost accounting and related statements or holds himself out to the public as a cost accountant;

(iii) renders professional services or assistance in or about matters of principle or detail relating to cost accounting procedure or the recording, presentation or certification of costing facts or data; or

(iv) renders such other services as, in the opinion of the Council, are or may be rendered by a cost accountant;

and the words "to be in practice", with their grammatical variations and cognate expressions, shall be construed accordingly.

*Explanation.*—An associate or a fellow of the Institute who is a salaried employee of a cost accountant or a firm of cost accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled clerks.

## CHAPTER II

### THE INSTITUTE OF COST AND WORKS ACCOUNTANTS

Incorporation of the Institute.

3. (1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the

Institute of Cost and Works Accountants of India, and all such persons shall be known as members of the Institute.

(2) The Institute shall have perpetual succession and a common seal, and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued.

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely:—

Entry of  
names in the  
Register.

(i) any person who was an associate or a fellow of the dissolved company (other than an honorary associate or honorary fellow or a student member thereof) immediately before the commencement of this Act, except any such person who is not a permanent resident of India and is not at such commencement practising as a cost accountant in India;

(ii) any person who has passed such examination and completed such training as may be prescribed for members of the Institute;

(iii) any person who, at the commencement of this Act, is engaged in the practice of cost accountancy in India and who fulfils such conditions as the Central Government or the Council may specify in this behalf;

(iv) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute:

Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem fit;

(v) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such examination, is at such commencement undergoing training whether within or without India:

Provided that such foreign examination and training are recognised by the Central Government or the Council in this behalf:

Provided further that the person passes the examination and completes his training within five years from the commencement of this Act.



(2) Every person belonging to the class mentioned in clause (i) of sub-section (1) shall have his name entered in the Register without the payment of any entrance fee.

(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv) and (v) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of the prescribed entrance fee, which shall not exceed rupees three hundred in any case.

(4) The Central Government shall take such steps as may be necessary for the purpose of having the names of all persons belonging to the class mentioned in clause (i) of sub-section (1) entered in the Register at the commencement of this Act.

Fellows and Associates. 5. (1) The members of the Institute shall be divided into two classes designated respectively as associates and fellows.

(2) Any person other than a person to whom the provisions of sub-section (3) apply shall, on his name being entered in the Register, be deemed to have become an associate member of the Institute and so long as his name remains so entered, shall be entitled to use the letters AICWA after his name to indicate that he is an associate member of the Institute of Cost and Works Accountants.

(3) Any person who was a fellow of the dissolved company and who is entitled to have his name entered in the Register under clause (i) of sub-section (1) of section 4, shall be entered in the Register as a fellow of the Institute.

(4) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a cost accountant shall, on payment of the prescribed fee, which shall not exceed rupees two hundred in any case, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute.

(5) Any person whose name is entered in the Register as a fellow of the Institute and so long as his name remains so entered, shall be entitled to use the letters FICWA after his name to indicate that he is a fellow of the Institute of Cost and Works Accountants.

6. (1) No member of the Institute shall be entitled to practice <sup>Certificate of</sup> whether within or without India unless he has obtained from the <sup>practice.</sup> Council a certificate of practice.

(2) Every such member shall make application in such form and pay such annual fee, differing in amount according as he is an associate or a fellow of the Institute, for his certificate as may be prescribed, and such fee shall be payable on or before the 1st day of April in each year:

Provided that if a member of the Institute who was in practice immediately before the commencement of this Act has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (1) by reason of his having practised during the period between such commencement and the disposal of the application.

7. Every member of the Institute in practice shall be designated as a cost accountant and no cost accountant shall use any other costing designation, whether in addition thereto or in substitution <sup>Members to be known as cost accountants</sup> therefor:

Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as cost accountants.

8. Notwithstanding anything contained in section 4, a person <sup>Disabilities.</sup> shall not be entitled to have his name entered in, or borne on, the Register if he—

(i) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

(ii) is of unsound mind and stands so adjudged by a competent court; or

(iii) is an undischarged insolvent; or

(iv) being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(v) has been convicted by a competent court whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing removed the disability; or

(vi) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period.

### CHAPTER III

#### COUNCIL OF THE INSTITUTE

**Constitution of the Council of the Institute.** 9. (1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under this Act.

(2) The Council shall be composed of—

(a) not more than eight persons elected by members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette; and

(b) not more than four persons nominated by the Central Government.

**Mode of election to Council.** 10. (1) Election under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner:

Provided that the first election under the said clause shall be held in such manner as the Central Government may specify in this behalf.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Central Government to a Tribunal appointed by it in this behalf and the decision of such Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Central Government by an aggrieved party within thirty days from the declaration of the result of the election.

11. If any body of persons referred to in section 9 fails to elect any of the members of the Council which it is empowered under that section to elect, the Central Government may nominate a person duly qualified to fill the vacancy, and any person so nominated shall be deemed to be a member of the Council as if he had been duly elected.

Nomination  
in default of  
election.

12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be:

President  
and Vice-  
President.

Provided that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

(3) The President or the Vice-President shall hold office until its dissolution and subject to his being a member of the Council at the relevant time, he shall be eligible for re-election.

13. (1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

Resignation  
of member-  
ship and  
casual  
vacancies.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council, or if his name is, for any cause, removed from the Register under the provisions of this Act.

(3) A casual vacancy in the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council:

Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the date of the dissolution of the Council.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

Duration  
and  
dissolution  
of Council.

14. (1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting.

(2) Notwithstanding the expiration of the duration of a Council (hereinafter referred to as the former Council), the former Council shall continue to exercise its functions under this Act until a new Council is constituted in accordance with the provisions of this Act, and on such constitution, the former Council shall stand dissolved.

Functions of  
the Council.

15. (1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include—

(a) the examination of candidates for enrolment and the prescribing of fees therefor;

(b) the registration and training of students;

(c) the regulation of the engagement and training of articulated clerks;

(d) the prescribing of qualifications for entry in the Register;

(e) the recognition of foreign qualifications and training for purposes of enrolment;

(f) the granting or refusal of certificates of practice under this Act;

(g) the maintenance and publication of a Register of persons qualified to practise as cost accountants;

(h) the levy and collection of fees from members, examinees and other persons;

(i) the removal of names from the Register and restoration to the Register of names which have been removed;

(j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(k) the carrying out, by financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;

(l) the maintenance of libraries and publication of books and periodicals relating to cost accountancy and allied subjects; and

(m) the exercise of disciplinary powers conferred by this Act.

16. (1) For the efficient performance of its duties, the Council may—

Staff,  
remuneration  
and  
allowances.

(a) appoint a Secretary who may also, if so decided by the Council, act as Treasurer;

(b) appoint such other persons on its staff as it deems necessary;

(c) require and take from the Secretary or from any other employee of the Council such security for the due performance of his duties as the Council considers necessary;

(d) fix the salaries, fees, allowances and other conditions of service of the Secretary and other employees of the Council;

(e) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and its Committees.

(2) The Secretary of the Council shall be entitled to participate in the meetings of the Council and the Committees thereof but shall not be entitled to vote thereat.

17. (1) The Council shall constitute from amongst its members the following Standing Committees, namely:—

Committees  
of the  
Council.

(i) an Executive Committee,

(ii) an Examination Committee, and

(iii) a Disciplinary Committee.

(2) The Council may also form such other Committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act.

(3) The Executive Committee shall consist of the President, and the Vice-President, *ex officio*, and three other members of the Council elected by the Council.

(4) The Disciplinary Committee shall consist of the President, *ex officio*, one member to be nominated by the Central Government from amongst the members nominated to the Council by that Government and one member to be elected by the Council.

(5) Each of the other Standing Committees shall consist of the President or the Vice-President, *ex officio*, as the Council may

decide, and two other members of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, a Standing Committee formed under sub-section (2), may, with the sanction of the Council, co-opt such other members of the Institute not exceeding two-thirds of total membership of the Committee as the Committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the Committee.

(7) The President shall be the Chairman of every Committee of which he is a member, and in his absence, the Vice-President, if he is a member of the Committee, shall be the Chairman.

(8) The Standing Committees shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

18. (1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council. <sup>Finances of the Council.</sup>

(2) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the funds distinguishing capital from revenue.

38 of 1949 (4) The annual accounts of the Council shall be subject to audit by a chartered accountant within the meaning of the chartered Accountants Act, 1949, to be appointed annually by the Council:

Provided that no member of the Council who is a chartered accountant or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section.

(5) As soon as may be practicable at the end of each year, but not later than the 30th day of September of the year next following, the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the Report of the Council for that year and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.

2 of 1934. (6) The Council may borrow from a scheduled bank as defined in the Reserve Bank of India Act, 1934, or from the Central Government—

(a) any money required for meeting its liabilities on capital account on the security of the fund or on security of any other assets for the time being belonging to it; or

(b) for the purpose of meeting current liabilities pending the receipt of income by way of temporary loan or over-draft.

## CHAPTER IV

### REGISTER OF MEMBERS

19. (1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

(2) The Register shall include the following particulars about every member of the Institute, namely:—

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members of the Institute as on the 1st day of April of each year, and a copy of such list shall be sent to each member of the Institute.

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be prescribed.

20. (1) The Council may remove from the Register the name of any member of the Institute,—

Removal  
from the  
Register.

(a) who is dead; or

(b) from whom a request has been received to that effect;  
or

(c) who has not paid any prescribed fee required to be paid by him; or



(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

## CHAPTER V

### MISCONDUCT

Procedure in  
inquiries  
relating  
misconduct  
of members  
of Institute.

21. (1) Where on receipt of information by, or a complaint made to, it the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the Central Government with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the Central Government with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the Central Government shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute and the Council, and shall afford the member and the Council an opportunity of being heard and may thereafter make any of the following orders, namely:—

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the Central Government thinks fit;

(d) refer the case to the Council for further inquiry and report.

§ of 1908.

(7) For the purposes of any inquiry under this section the Council and the Disciplinary Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

*Explanation.*—For the purposes of this section the expression “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

22. For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in the First Schedule and the Second Schedule, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances. Misconduct defined.

## CHAPTER VI

## REGIONAL COUNCILS

Constitution  
and functions  
of Regional  
Councils.

23. (1) For the purpose of advising it on matters concerning its functions, the Council may constitute a Regional Council, as and when it deems fit, for each of the regional constituencies specified by the Central Government under clause (a) of sub-section (2) of section 9.

(2) The Regional Councils shall be constituted in such manner and exercise such functions as may be prescribed.

## CHAPTER VII

## PENALTIES

Penalty for  
falsely claim-  
ing to be a  
member, etc.

24. Any person who,—

(i) not being a member of the Institute—

(a) represents that he is a member of the Institute; or

(b) uses the designation cost accountant; or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a cost accountant;

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for  
using name  
of the  
Council,  
awarding  
degrees of  
cost account-  
ancy, etc.

25. (1) Save as otherwise provided in this Act, no person shall,—

(i) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in cost accountancy similar to that of a member of the Institute; or

(iii) seek to regulate in any manner whatsoever the profession of cost accountants.

(2) Nothing contained in this section shall apply to any University established by law or to any body affiliated to the Institute.

26. No company, whether incorporated in India or elsewhere, shall practise as cost accountants. Companies not to engage in cost accountancy.
27. (1) No person other than a member of the Institute shall sign any document on behalf of a cost accountant or a firm of cost accountants in his or its professional capacity. Unqualified persons not to sign documents.
- (2) Any person contravening the provision of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.
28. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Offences by companies.
- Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- Explanation.*—For the purposes of this section,—
- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm means a partner in the firm.
29. No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government. Sanction to prosecute.

## CHAPTER VIII

DISSOLUTION OF THE INSTITUTE OF COST AND WORKS ACCOUNTANTS  
REGISTERED UNDER THE COMPANIES ACT, 1956 (I OF 1956)

Dissolution  
of the  
Institute of  
Cost and  
Works  
Accountants  
registered  
under the  
Companies  
Act, 1956.

30. On the commencement of this Act,—

(a) the company known as the Institute of Cost and Works Accountants registered under the Companies Act, 1956, shall be dissolved and thereafter no person shall make, assert or take any claims, demands or proceedings against the dissolved company or against any officer thereof in his capacity as such officer except in so far as may be necessary, for enforcing the provisions of this Act;

(b) the right of every member to or in respect of the dissolved company shall be extinguished, and thereafter no member of that company shall make, assert or take any claims or demands or proceedings in respect of that company except as provided in this Act.

Transfer of  
assets and  
liabilities of  
the dissolved  
company to  
the Institute.

31. (1) On the commencement of this Act there shall be transferred to and vested in the Institute all the assets and liabilities of the dissolved company.

(2) The assets of the dissolved company shall be deemed to include all rights and powers, and all property, whether movable or immovable of the company, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the dissolved company and all books of accounts or documents of the dissolved company; and the liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing of that company.

(3) All contracts, debts, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party, subsisting or having effect immediately before the commencement of this Act, shall be of as full force and effect against or in favour of the Institute, as the case may be, and may be enforced as fully and effectively as if instead of the dissolved company, the Institute had been a party thereto.

(4) If, on the commencement of this Act, any suit, appeal or other legal proceeding of whatever nature by or against the dissolved company is pending, the same shall not abate, be discontinued or be

in any way prejudicially affected by reason of the transfer to the Institute of the assets and liabilities of the dissolved company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Institute, in the same manner and to the same extent as it would or may be continued, prosecuted and enforced by or against the dissolved company if this Act had not been passed.

32. (1) Every person employed in the dissolved company prior to the 1st day of September, 1958, and still in its employment immediately before the commencement of this Act shall, as from such commencement, become an employee of the Institute, shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the dissolved company if this Act had not been passed, and shall continue to do so unless and until his employment in the Institute is terminated or until his remuneration, terms and conditions of employment are duly altered by the Institute.

Provisions  
respecting  
employees of  
the dissolved  
company.

14 of 1947. (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee of the dissolved company to the Institute shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

## CHAPTER IX

### MISCELLANEOUS

33. (1) An appeal shall lie to the Central Government against Appeals any order of the Council imposing on a member of the Institute any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21.

(2) The Central Government may, on its own motion or otherwise, after calling for the records of the case, review any order made by the Council under sub-section (2) or sub-section (4) of section 21 and—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm, or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further inquiry as the Central Government considers proper in the circumstances of the case;

(d) pass such other order as the Central Government thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard:

Provided further that an order imposing or enhancing penalty shall not be passed unless the person concerned has also been given an opportunity of being heard.

(3) Every order made by the Central Government under this Act shall be final and shall not be called in question in any court.

Alteration in the Register and cancellation of certificate.

34. (1) Where an order is made under this Act reprimanding a member a record of the punishment shall be entered against his name in the Register.

(2) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

Directions of the Central Government.

35. (1) The Central Government may from time to time issue such directions to the Council as in the opinion of the Central Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

(2) Directions issued under sub-section (1) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(3) If, in the opinion of the Central Government the Council has persistently made default in giving effect to the directions issued under this section, the Central Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be specified by the Central Government.

(4) Where the Central Government passes an order under sub-section (3) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Central Government.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulations or orders made thereunder.

37. (1) Where a cost accountant or a firm of cost accountants has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute : Maintenance of branch offices.

Provided that the Council may in suitable cases exempt any cost accountant or a firm of cost accountants from the operation of this sub-section.

(2) Every cost accountant or a firm of cost accountants maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

38. (1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute established under this Act or from practising the profession of cost accountancy or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of cost accountancy, in India. Reciprocity.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to cost accountancy shall be recognised for the purposes of entry in the Register.

39. (1) The Council may, by notification in the Gazette of India, make regulations for the purpose of carrying out the objects of this Act, and a copy of such regulations shall be sent to each member of the Institute. Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute ;

(c) the qualification required for the purposes of sub-section (4) of section 5;

(d) the conditions under which any examination or training may be treated as equivalent to the examination or training prescribed for members of the Institute;



(e) the conditions under which any foreign qualification may be recognised;

(f) the manner in which and the conditions subject to which applications for entry in the Register may be made ;

(g) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates ;

(h) the manner in which elections to the Council and the Regional Councils may be held;

(i) the particulars to be entered in the Register;

(j) the functions of Regional Councils;

(k) the training of articled clerks and the fixation of limits within which premia may be charged from such clerks and the cancellation of articles for misconduct or for any other sufficient cause;

(l) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(m) the carrying out of research in accountancy;

(n) the maintenance of libraries and publication of books and periodicals relating to cost accountancy and allied subjects;

(o) the management of the property of the Council and the maintenance and audit of its accounts;

(p) the summoning and holding of meetings of the Council and committees thereof, the times and places of such meetings, the procedure to be followed thereat and the number of members necessary to form a quorum;

(q) the manner in which the annual list of members of the Institute shall be published;

(r) the powers, duties and functions of the President and the Vice-President of the Council;

(s) the functions of the Standing and other committees and the conditions subject to which such functions shall be discharged;

(t) the terms of office, and the powers, duties and functions of the Secretary and other employees of the Council;

(u) the exercise of disciplinary powers conferred by this Act;

(v) the terms and conditions of service of persons who have become employees of the Institute under section 32 of this Act;

(w) the registration of students and the fees to be charged for such registration; and

(x) any other matter which is required to be or may be prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2), the Central Government may frame the first regulations for the purposes mentioned in this section, and such regulations shall be deemed to have been made by the Council, and shall remain in force until they are amended, altered or revoked by the Council.

## THE FIRST SCHEDULE

[See sections 21 (4) and 22]

## PART I

*Misconduct in relation to cost accountants*

A cost accountant shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practise in his name as a cost accountant unless such person is also a cost accountant and is in partnership with or employed by himself;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative or the widow or dependants of a deceased partner whether such partner had retired from practice or not at the date of his decease;

(3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member of the Institute;

(4) enters into partnership with any person other than a cost accountant or a person resident without India who but for his residence abroad would be entitled to be registered as a member of the Institute under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships, provided that the cost accountant shares in the fees or profits of the business of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a cost accountant, any professional business;

(6) solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than cost accountant on professional documents, visiting cards, letter-heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost and Works Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts a position as cost accountant previously held by another cost accountant without first communicating with him in writing;

(9) accepts an appointment as cost accountant of a concern without first ascertaining from it whether the legal requirements if any in respect of such appointment have been duly complied with;

(10) charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(11) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company unless he or any of his partners is interested in such company as accountant;

(12) accepts a position as cost accountant previously held by some other cost accountant in such conditions as to constitute under-cutting;

(13) allows a person not being a member of the Institute or a member not being his partner to sign on his behalf or on behalf of his firm, any cost or pricing statements or any other statements related thereto;

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**PART II***Misconduct in relation to members of the Institute in service*

A member of the Institute (other than a cost accountant) being an employee of any person, shall be deemed to be guilty of professional misconduct, if he—

(1) pays or allows or agrees to pay or allow, directly or indirectly, to any person any share in the emoluments of the employment engaged into by the member;

(2) accepts or agrees to accept by way of commission or gratification any part of the fees, profits or gains payable to a lawyer, a cost accountant or a broker engaged by any person or any agent or customer of such person, firm or person;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

**PART III***Misconduct in relation to members of the Institute generally*

A member of the Institute shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a fellow styles himself as a fellow;

(3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its committees.

## THE SECOND SCHEDULE

[See sections 21(5) and 22]

*Misconduct in relation to cost accountants requiring action by the  
Central Government*

A cost accountant shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name or in the name of his firm a report of an examination of cost accounting and related statements, unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another cost accountant;

(3) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on cost or pricing statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(5) fails to disclose in a cost or pricing statement a material fact known to him, but disclosure of which is necessary to make the cost or pricing statement not misleading;

(6) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;

(7) is grossly negligent in the conduct of his professional duties.

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(8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended;

(11) is guilty of such other act or omission in his professional capacity as may be specified by the Council in this behalf, by notification in the Gazette of India.

## STATEMENT OF OBJECTS AND REASONS

The increasing tempo of industrialisation in this country in the context of planning has brought the subject of costing and cost accountancy to the fore-front. Current discussions on the measures needed to improve productive skill and industrial management will not by themselves be adequate unless due account is taken of the necessity for the maximum utilisation of labour and materials at the minimum of cost. It is now recognised that this can be ensured only by a proper system of costing and cost accounting. The profession of cost accountants is, however, of comparatively recent origin in India and, unlike the profession of chartered accountants, there is no law to regulate this profession, particularly because there is no law imposing any obligation in regard to the maintenance, certification or publication of cost accounts by industrial undertakings. It is, however, considered desirable that, notwithstanding the absence of any such legal obligation, in view of the increasing necessity of costing in the context of the rapid industrialisation of the country, the profession should be organised on a statutory basis on the lines of the Institute of Chartered Accountants of India so that the profession assumes the responsibilities for the maintenance of requisite standards of professional qualifications, discipline and conduct of its members under the general guidance and supervision of the Government.

2. The Bill seeks to authorise the establishment of an autonomous Institute of Cost Accountants and to entrust to it the functions of regulating the profession.

NEW DELHI;

LAL BAHADUR.

*The 13th September, 1958.*

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## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 empowers the Central Government to specify the manner in which the first elections to the Council shall be held.

2. Clause 39 empowers the Council to make regulations generally to carry out the purposes of the Act. The matters in respect of which such regulations may be made are specified in that clause. They relate among others to the standard and conduct of examination under the Act, the qualifications for the entry of the name of any person in the Register as a member of the Institute, the conditions under which any examination or training may be treated as equivalent to the examination or training prescribed for members of the Institute, the conditions under which any foreign examination may be recognised, the fees payable for membership of the Institute, the manner in which elections to the Council and the Regional Councils may be held, the functions of Regional Councils, the regulation and maintenance of the status and standard of professional qualifications of members of the Institute, the maintenance of libraries relating to the cost accountancy, the summoning and holding of meetings of the Council and committees thereof, the powers, duties and functions of the President and Vice-President of the Council, the term of office and the powers, duties and functions of the Secretary and other employees of the Council and the terms and conditions of service of persons who have become employees of the Institute under clause 32. All these matters are of a procedural and routine character.

3. The proposed delegation of legislative power is of a normal character.

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S. N. MUKERJEE,  
*Secretary.*

